

STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING
June 19, 2015

VIRGINIA HOUSING CENTER
GLEN ALLEN, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. James R. Dawson, Vice-Chairman
Mr. W. Keith Brower, Jr.
Mr. Vince Butler
Mr. J. Daniel Crigler
Mr. John H. Epperson
Mr. Alan D. Givens
Mr. Joseph A. Kessler, III
Mr. John A. Knepper, Jr.
Mr. Eric Mays
Ms. Joanne D. Monday
Mr. W. Shaun Pharr

Members Absent

Mr. Matthew Arnold
Ms. Patricia S. O'Bannon

Call to Order

The meeting of the State Building Code Technical Review Board (Review Board) was called to order by the Chairman at approximately 10:00 a.m. and Mr. Alan Givens, a newly-appointed board member, was welcomed by the Chairman. Mr. Givens spoke briefly concerning his background and qualifications.

Roll Call

The attendance was established by the Secretary, Mr. Vernon W. Hodge, and constituted a quorum. Mr. Justin Bell, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.

Approval of Minutes

After consideration, Mr. Dawson moved to approve the minutes of the March 20, 2015 meeting as presented in the agenda package. The motion was seconded by Ms. Monday and passed unanimously with Messrs. Epperson, Knepper and Mays abstaining from the vote.

Public Comment

The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the public comment period.

Final Orders

Appeal of T. Chester Baker; Appeal No. 14-8(B):

Mr. Crigler moved to approve the final order as presented in the agenda package. The motion was seconded by Mr. Kessler and passed unanimously with Messrs. Epperson, Knepper and Mays abstaining from the vote.

Appeal of T. Chester Baker; Appeal No. 14-8(A):

Mr. Crigler moved to approve the final order as presented in the agenda package. The motion was seconded by Mr. Butler and passed unanimously with Messrs. Epperson, Knepper and Mays abstaining from the vote.

Appeal of Mary Ann Capp; Appeal Nos. 14-1 and 14-10:

Mr. Crigler moved to approve the final order as presented in the agenda package. The motion was seconded by Ms. Monday and passed unanimously with Messrs. Epperson, Knepper and Mays abstaining from the vote.

New Business

The Secretary informed board members that Appeal No. 13-4 (The Islander, LLC) had been withdrawn by the appellant subsequent to the agenda package being distributed. Mr. Dawson moved to place the appeal among the ended causes of the board. The motion was seconded by Ms. Monday and passed unanimously.

Appeal of Leslie Carper; Appeal No. 15-7:

An appeal hearing convened with the Chairman serving as the presiding officer. Ms. Carper was requesting action to be taken on a prior appeal filed by the Fairfax County Department of Code Compliance (Appeal No. 14-5) involving a condominium at 8626 Beekman Place. Ms. Carper was a party to the prior appeal as the registered agent for the condominium owner. The prior appeal had been withdrawn by the County prior to being heard by the Review Board since violations cited by the County under Part III of the Virginia Uniform Statewide Building Code, the Virginia Maintenance Code, had been corrected.

New Business

Appeal of Leslie Carper; Appeal No. 15-7 (continued):

The following person was sworn in and given an opportunity to present testimony:

Elizabeth Perry, Fairfax County building maintenance official

Also present was:

Cherie Halyard, Esq., legal counsel for Fairfax County

The Chairman noted that Ms. Carper submitted written arguments in lieu of attending the hearing and asked the County representatives whether they objected to the distribution of submittals that came in past the established deadline. With no objection from the County, the documents were distributed.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision – Appeal of Leslie Carper; Appeal No. 15-7:

After deliberation, Mr. Mays moved to dismiss the appeal as invalid as the prior appeal had been withdrawn and there had been no new application of the Virginia Maintenance Code by the County to appeal. The motion was seconded by Mr. Knepper and passed unanimously.

Appeal of Jonathan and Carolyn Clark; Appeal No. 14-13:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal involved citations issued under the Virginia Maintenance Code by the Fairfax County Department of Code Compliance for conditions at the Clarks' residence at 7227 Auburn Street, in Annandale. The Fairfax County Board of Building Code Appeals upheld the County's enforcement action.

New Business

Appeal of Jonathan and Carolyn Clark; Appeal No. 14-13 (continued):

The following persons were sworn in and given an opportunity to present testimony:

Jon Clark

Elizabeth Perry, Fairfax County building maintenance official

Charles Forshee, Fairfax County inspector

Al Sanchez, Fairfax County inspector

Also present were:

Craig Blakeley, Esq., legal counsel for Mr. Clark

Cherie Halyard, Esq., legal counsel for Fairfax County

No exhibits were submitted to supplement the documents in the agenda package. The Chairman noted that a Virginia Court of Appeals decision from a prior Review Board case addressed issues relating to the jurisdiction of the local government appeals board and the Review Board. The Secretary distributed copies of the Court of Appeals decision.

After testimony concluded, the Chairman closed the hearing. Prior to deliberation of the appeal, Mr. Dawson moved to recess the meeting and reconvene in executive closed session as authorized by § 2.2-3711(A)(7) of the Code of Virginia. The motion was seconded by Mr. Brower and passed unanimously.

(Executive closed session duration was approximately fifteen minutes.)

The Chairman stated that the board would reconvene in open session. The Secretary called the roll and each board members responded with "yes" to certify that to the best of their knowledge only public business matters lawfully exempted from open meeting requirements were discussed or considered and that only such public business matters as were identified in the motion by which the executive closed meeting was convened were heard, discussed or considered in the closed meeting.

New Business

Decision - Appeal of Jonathan and Carolyn Clark; Appeal No. 14-13:

The right of entry issues were deliberated. Mr. Epperson moved to uphold the County's enforcement action as proper. The motion was seconded by Mr. Dawson and passed unanimously with Mr. Pharr abstaining from the vote.

The merits of the County's enforcement action was then deliberated. Mr. Dawson moved to uphold the citations issued by the County. After discussion, Mr. Dawson clarified the motion to uphold the citations issued by the County as delineated in the Review Board staff document in the agenda package for the appeal. The motion was seconded by Mr. Givens and passed unanimously.

The issue of timeframes for the correction of the cited violations was then deliberated. Mr. Pharr moved to uphold the 30-day time frame for correction of the violations. The motion was seconded by Ms. Monday. After discussion, Mr. Kessler offered a friendly amendment to the motion to have the timeframe for correction of the violation to begin upon the day of entry of the final order. Mr. Pharr and Ms. Monday agreed to the amendment and the amended motion passed unanimously.

Appeal of Mark L. Riley; Appeal No. 14-14:

The Chairman recused himself due to being employed by the locality involved in the appeal. The Vice-Chairman convened a hearing for the matter and served as the presiding officer in the absence of the Chairman. The appeal concerned citations issued by the Henrico County building inspections department under the Virginia Maintenance Code for a unlicensed group home owned by Mr. Riley and located at 5400 Nine Mile Road. Mr. Riley had previously filed an appeal to the Henrico County Local Board of Building Code Appeals which, after conducting a hearing, dismissed Mr. Riley's appeal, ruling that no appeal for the cited violations was made.

New Business

Appeal of Mark L. Riley; Appeal No. 14-14 (continued):

The following persons were sworn in and given an opportunity to present testimony:

Mark Riley
Lori Tillis, witness for Mr. Riley
Gregory Revels, Henrico County building official
Jerry Buresh, Henrico County inspector
Paul A. Johnson, Henrico County inspector

Also present was:

Denise Letendre, Esq., legal counsel for Henrico County

No exhibits were submitted to supplement the documents in the agenda package.

After testimony concluded, the Vice-Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision – Appeal of Mark L. Riley; Appeal No. 14-14:

After deliberation, Mr. Mays moved to rule on the full appeal and to uphold the October 8, 2014 notice of violation issued by the County. The motion was seconded by Ms. Monday and passed unanimously.

Appeal of Edward J. Taborek; Appeal No. 15-3:

A hearing convened with the Chairman serving as the presiding officer. The appeal was of a citation under the Virginia Maintenance Code by the Fairfax County Department of Code Compliance for the lack of maintenance of an exterior stairway at Mr. Taborek's home, located at 6200 Wayles Street, in Springfield. The appeal was first heard by the Fairfax County Board of Building Code Appeals, which upheld the citation.

New Business

Appeal of Edward J. Taborek; Appeal No. 15-3 (continued):

The following persons were sworn in and given an opportunity to present testimony:

Edward Taborek
Elizabeth Perry, Fairfax County building maintenance official
F. Siddy Charley, Fairfax County inspector

Also present was:

Cherie Halyard, Esq., legal counsel for Fairfax County

No exhibits were submitted to supplement the documents in the agenda package.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision – Appeal of Edward J. Taborek; Appeal No. 15-3:

After deliberation, Mr. Mays moved to uphold the citation issued by the County. The motion was seconded by Mr. Kessler and passed unanimously.

Interpretations

A request from the Town of Farmville was considered. The Secretary noted that the building/fire official for the town stated he used the form to ask for staff assistance because he found it online and no official interpretation was necessary, but since the Review Board's policy is to bring any submitted requests to the Board, it was included in the agenda package. Mr. Ed Altizer, the State Fire Marshal, was present and given an opportunity to comment on the request as it involved a provision in state law directing the State Fire Marshal's Office to do inspections.

Interpretations

A request from the City of Lynchburg was considered. The Secretary advised that the request stemmed from an active appeal where the issue of whether the appeal was proper was present. The building official agreed to submit the request in an attempt to resolve the appeal situation at an informal fact-finding conference for the appeal conducted by Review Board staff. The appellee was advised at the conference of the Review Board's policy for not considering interpretation requests while there was a pending appeal and the appellant was given an opportunity to decide whether to withdraw the appeal. Review Board staff contacted the appellant's attorney the day before this meeting and were informed that the appellant elected not to withdraw the appeal. After discussion, Mr. Dawson noted that it would be difficult to issue an interpretation having general application as each situation the request was attempting to address would likely be different. Mr. Dawson then moved to postpone consideration of the interpretation request pending the outcome of the appeal. The motion was seconded by Mr. Crigler and passed unanimously.

Secretary's Report

The Board's function of recommending changes to the codes was discussed and Ms. Monday raised the issue of notification of owners of permits taken out by others. After discussion, it was decided that it would be difficult to craft a proposal which would not cause problems for the local building departments.

The Secretary discussed other agency activities and projected future meetings.

Adjournment

There being no further business, the meeting was adjourned by motion of Mr. Epperson at approximately 4:00 p.m.

Approved: August 21, 2015

s/s

Chairman, State Building Code Technical Review Board

s/s

Secretary, State Building Code Technical Review Board